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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Dominican Republic

1. The Committee examined the fourth periodic report of the Dominican Republic (CCPR/C/DOM/99/3) at its 1906th and 1907th meetings, held on 23 March 2001, and at its 1921st meeting (seventy-first session), held on 3 April 2001, adopted the following observations:

A. Introduction

2. The Committee welcomes the fourth periodic report of the Dominican Republic and the opportunity to continue to study the situation of human rights with the State party through a delegation made up of officials from various sectors of the Government. Nevertheless, it notes with concern that the information provided in the report is in many respects incomplete, that important recommendations made during the consideration of the previous report have not been taken into account, and that Committee guidelines were not followed in its elaboration. The Committee would have welcomed a more in-depth evaluation by the State party of the existing legislative deficiencies and the factors and difficulties encountered in implementation of the Covenant. However, the Committee expresses its gratitude to the delegation for the updated additional information which it provided in reply to the questions posed by members.

B. Positive aspects

3. The Committee is pleased that its recommendation to revise the Constitution of the Dominican Republic has been accepted and that a new text was ratified and promulgated on 14 August 1994. The Committee notes that the new Constitution omits clauses which were incompatible with the Covenant, for example the penalty of internal exile and reciprocity for protection of the human rights of aliens.

4. It is also gratified to learn of the repeal of Decree-Law No. 233-91, which had led to mass deportations of Haitian workers under 16 and over 60 years of age, seriously violating several articles of the Covenant, as noted in the concluding observations on the previous report.

5. The Committee also notes with satisfaction both the establishment in the Constitution of the National Board of the Judiciary, which is responsible for appointing the members of the Supreme Court, and the legal establishment of the Office of Ombudsman.

C. Principal causes of concern and recommendations

6. The Committee points out that article 3 of the current Constitution recognizes and applies the norms of international law which have been adopted by the State party and that, since these include the International Covenant on Civil and Political Rights, the Covenant has constitutional standing. However, it notes with regret that, in general, there has been a lack of progress in the implementation of the Covenant since the consideration of the third periodic report. In particular, a significant body of legislation is still incompatible with the Covenant, despite the fact that the latter has higher standing and that over 21 years have elapsed since the Dominican Republic acceded to it.

7. The Committee regrets the fact that it has not been informed unequivocally about the application of the Covenant within the Dominican Republic or about action in response to its decisions under the Optional Protocol, and regrets in particular the lack of clarity in the response given to communication 449/1991 (Mojica v. Dominican Republic).

The State party should provide that information (art. 2) to the Committee.

8. The Committee notes with great concern the information from the delegation that 229 people suffered violent deaths at the hands of the police force in 2000, and that according to other sources the figure could be higher still. It has taken note with equal concern of the reports of extrajudicial executions of prisoners in the custody of the State party in its prisons and of deaths at the hands of the National Police, the Armed Forces and the National Drug Control Office owing to the excessive use of force and the apparent impunity that they enjoy.

The State party should take urgent steps to ensure respect for article 6 of the Covenant, to have those responsible for violations of the right to life guaranteed thereunder prosecuted and punished, and to make redress.

9. The Committee notes with concern that, despite being prohibited by the Constitution (art. 8.1), torture is widespread, occurring in prisons and elsewhere, that not all its forms are classified as crimes under the law and that no independent body exists to investigate the many complaints of torture and cruel, inhuman or degrading treatment. Reports that acts of torture have not been investigated, that the perpetrators of those acts have in the majority of cases not been brought to trial and that victims and their families have not been compensated are also cause for concern.

The State party should take prompt action to comply fully with article 7 of the Covenant and to have violations thereof investigated so that the culprits may be tried and punished by ordinary courts and redress provided.

10. The Committee deplores the fact that the National Police has its own judicial body, separate from that established by the Constitution, to try crimes and offences by its members; this is incompatible with the principle of equality before the law protected by articles 14 and 2, paragraph 3, of the Covenant. The Committee also observes that, although the police is a civilian body legally subordinate to the Department of the Interior and Police, in practice it is subject to military authority and discipline, to the extent that the chief of police is a general of the armed forces on active duty.

The State party should ensure that the jurisdiction of the police tribunals is restricted to internal disciplinary matters and that their powers to try police officers accused of common crimes are transferred to the ordinary civilian courts.

11. Despite the creation of more courts, the Committee notes that the high percentage of prisoners in pre-trial detention observed in the third report has increased. This means that many people accused of crimes remain in detention waiting for their trials to end, which is counter to article 9, paragraph 3, and article 14, paragraph 2, of the Covenant.

The State party should reform the law immediately to make pre-trial detention the exception rather than the rule, used only when strictly necessary. It should also provide statistics on the number of people in pre-trial detention and the size of the prison population.

12. The power to hold prisoners incommunicado continues to provoke deep concern.

The State party should revise the law to ensure that detention incommunicado does not violate articles 7, 9 and 10 of the Covenant.

13. The Committee is seriously concerned at the statement in paragraph 78 of the report that applications for habeas corpus are heard weeks or months after receipt. This is incompatible with article 9 of the Covenant.

The State party should take prompt action to enable the courts to rule on the legality of detentions as quickly as possible.

14. The Committee has noted with serious concern that, far from improving as a result of the construction of new facilities and the renovation of older ones, the situation in prisons and other places of detention has worsened owing to the increase in the number of prisoners, enormous overcrowding, deplorable sanitary conditions, failure to separate juveniles from adults and men from women and the existence of solitary confinement cells without light, windows or ventilation.

The State party should establish institutional mechanisms to supervise prison conditions with a view to complying with article 10 of the Covenant and to investigate prisoners' complaints. The prison renovation programme that has been announced should go ahead as soon as possible.

15. The Committee is concerned to learn that prisons are guarded by the police and the army because there is no prison guard service, although training courses to that end have started.

To comply with article 10 of the Covenant, the State party needs to establish as soon as possible a specialized prison guard service independent of the police investigation services and the armed forces that meets the United Nations standard minimum rules on the treatment of prisoners and is given instruction in human rights.

16. The Committee is gravely concerned at the continuing reports of mass expulsions of ethnic Haitians, even when such persons are nationals of the Dominican Republic. It holds mass expulsions of non-nationals to be in breach of the Covenant since no account is taken of the situation of individuals for whom the Dominican Republic is their own country in the light of article 12, paragraph 4, nor of cases where expulsion may be contrary to article 7 given the risk of subsequent cruel, inhuman or degrading treatment, nor yet of cases where the legality of an individual's presence in the country is in dispute and must be settled in proceedings that satisfy the requirements of article 13.

The State party should guarantee the right of every Dominican national not to be expelled from the country and ensure that all persons facing deportation proceedings are covered by the safeguards established in the Covenant.

17. The Committee expresses its concern over the failure to protect Haitians living or working in the Dominican Republic from serious human rights abuses such as forced labour and cruel, inhuman or degrading treatment. It also expresses concern over the living and working conditions of Haitian workers and the tolerated practices that restrict their freedom of movement.

The State party should give priority to addressing the issue of the working and living conditions of Haitian workers, and ensure that those workers can take advantage of the rights and safeguards laid down in articles 8, 17 and 22 of the Covenant.

18. The Committee is concerned at the abuse of the legal notion of "transient aliens". According to information in its possession, such persons may be born in the Dominican Republic to parents who were also born there but are still not considered to be nationals of the Dominican Republic.

The State party should regulate the situation of everyone living in the country and grant the rights recognized by article 12 of the Covenant.

19. The Committee welcomes the greater level of participation of women in political life but cannot fail to express its concern over a number of issues where the rights of women are not properly respected, especially their rights to legal equality, equal opportunities in the workplace, their still limited participation in public and private life, and levels of domestic violence. Since it was not given sufficient information, the Committee has not been able to make a thorough assessment of the situation of women in Dominican society but it acknowledges that the establishment and work of the Department for the Advancement of Women is a positive development for combating the domestic violence, rape and sexual abuse to which many women are subjected. It has also been unable, for want of information to assess the extent of trafficking in women.

The State party should provide such information to the Committee as soon as possible so that its compliance with articles 3, 25 and 26 of the Covenant can be properly evaluated and should respect and guarantee all the rights of women. To that end, it should provide the necessary support to the Department for the Advancement of Women to enable it to achieve its goals.

20. The Committee expresses concern over the lack of information on the protection of the rights of ethnic, religious and linguistic minorities in the Dominican Republic. The delegation's explanation that minorities are so integrated into the country's culture that they cannot be considered as such is not sufficient.

The State party should provide the Committee with information on its application of article 27 of the Covenant.

21. The Committee takes note of the fact that the law makes no provision for the status of conscientious objector to military service, which may legitimately be claimed under article 18 of the Covenant.

The State party should ensure that persons liable for military service may claim the status of conscientious objector and perform alternative service without discrimination.

22. The Committee takes note of the existence of a crime of "desacato" (disrespect of authority), which it deems contrary to article 19 of the Covenant.

The State party should take steps to abolish that crime.

23. The State party should widely disseminate the text of its fourth periodic report and these concluding observations.

24. The State party should, pursuant to rule 70, paragraph 4, of the Committee's rules of procedure, send information within one year on action it has taken in the light of the Committee's recommendations on disappearances and extrajudicial executions (para. 8 above), torture and the use of excessive force by the police and security forces (para. 9), police detention and detention pending judgement (paras. 11, 12 and 13), prisons (paras. 14 and 15) and the status of Haitians (paras. 16, 17 and 18). The Committee hopes that information in response to the remainder of its recommendations will be incorporated into the fifth periodic report due for submission by 1 April 2005.

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